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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 253

PAUL K. ROBERTS, ... PETITIONER

vs.

W. L. LOVE, JAMES MOSELEY, O. K. LITTLEFIELD, JAMES WHITE AND MARION WHITE, A PARTNERSHIP, D/B/A THE EAGLE PUBLISHING COMPANY AND ROBERT L. NEWTON, ... RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

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ARK. BRIEF PRINTING CO., PINE BLUFF, ARK.

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FEDERAL CONSTITUTION

Fifth Amendment
Seventh Amendment
Fourteenth Amendment

ARKANSAS CONSTITUTION

Article 2, Section 8

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W. L. LOVE, JAMES MOSELEY, O. K. LITTLEFIELD, JAMES WHITE AND MARION WHITE, A PARTNERSHIP, D/B/A THE EAGLE PUBLISHING COMPANY AND ROBERT L. NEWTON, ... RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

Petitioner prays that a writ of certiorari issue to review the decision of the Supreme Court of Arkansas, of March 28, 1960, and the order of the court denying rehearing May 2, 1960, which decision and order denying rehearing affirmed the judgment of the Circuit Court of Bradley County, Arkansas, entered November 5, 1959.

OPINION BELOW

The opinion of the Supreme Court of Arkansas sought to be reviewed herein, is officially reported in ~~the Arkansas sought to be reviewed herein, is officially reported~~ in the Arkansas Law Reporter, Vol. 106, No. 12, at page 373, dated March 28, 1960. That opinion is reprinted in an Appendix to this petition at pages 8 to 20.

JURISDICTION

The judgment of the Circuit Court of Bradley County, Arkansas, was entered November 5, 1959. (R. 19-20). The judgment was affirmed by the Supreme Court of Arkansas, March 28, 1960. (R. 27). Rehearing was denied by the Supreme Court of Arkansas, May 2, 1960. (R. 41). The jurisdiction of this court is invoked under 28 U. S. C. Sec. 1257 (3).

QUESTION PRESENTED

On September 12, 1959, petitioner filed his Compaint at Law against respondents alleging that respondents libelled him by publishing a certain news article about him. Respondents filed a motion to strike and demurrer to the complaint. The trial court and the Supreme Court of Arkansas sustained the motion to strike and the demurrer and dismissed the complaint. The question here is whether the motion to strike and the demurrer should have been sustained, and whether the action of the court deprived petitioner of his rights guaranteed by Amendments Five, Seven and Fourteen of the Constitution of the United States and by Article 2, Section 8 of the Constitution of Arkansas.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves Amendments Five, Seven and Fourteen to the Constitution of the United States and Article 2, Section 8, of the Constitution of the State of Arkansas.

STATEMENT OF THE CASE

Petitioner is a practicing attorney in Warren, Bradley County, Arkansas. On March 3, 1959, at 5:15 P. M., petitioner was summoned by the Circuit Court of Bradley County, Arkansas, to appear within the hour in the Circuit Court room.

Upon arrival at the court room, the circuit judge appointed petitioner to defend one A. C. Duncan, a Negro man, who was under indictment for assault with intent to rape a white high school senior girl, and with burglary. The officers who arrested the defendant stated that the defendant had admitted breaking through a window in the girl's home at 2:00 o'clock, A. M., on February 28, 1959, while the entire family was asleep, and entering with intent to assault the school girl.

After a conference with the defendant, petitioner moved the court to commit the defendant to the State Hospital for mental observation.

On March 5, 1959, the respondents printed the following article in the *Eagle Democrat*, the local weekly newspaper:

"ATTACKER SENT TO HOSPITAL FOR OBSERVATION"

"Through a legal technicality, Judge G. B. Colvin, Jr., Tuesday was forced to send A. C. Duncan, admitted culprit in an attempted rape case here, to the State Hospital for 30 days observation".

"Duncan's hearing before Judge Colvin was held Tuesday evening, and Paul K. Roberts, Warren attorney, was appointed as the Negro's lawyer".

"When Duncan was asked to make a plea of guilty or not guilty, Attorney Roberts arose and made a motion that he be sent to the State Hospital for observation. Roberts said he thought the Negro might be insane".

"Prosecuting Attorney A. James Linder of Hamburg asked Roberts if he really thought that or if he was 'grasping for straws'. Roberts assured the Court that he felt the Negro might be insane".

"Judge Colvin deliberated about the matter for several minutes before granting Roberts' motion, but he told those present under the law, he was forced to do it".

"At the start of the hearing, a representative of this newspaper received the permission of Judge Colvin to take candid camera pictures while the hearing was going on. After court started however, Attorney Roberts raised an objection to the photographer's being allowed to take pictures. No more were taken".

"Duncan admitted to Chief of Police Tommy Dunaway and to the Editor of the Eagle Democrat Wednesday that he raised the window of an East Central Street home here, went in the window and attempted to attack a high

school senior girl. He said he wasn't being forced or coerced into making the statement, but that he was making it of his own free will".

On September 12, 1959, petitioner filed suit for libel against the respondents. Respondents filed a motion to strike and a demurrer to the complaint which pleadings were sustained by the trial judge and the cause was dismissed. The Supreme Court of Arkansas sustained the order of dismissal. The question presented here is whether the motion to strike and demurrer should have been sustained and whether or not petitioner has been deprived of his constitutional rights by being denied his day in court.

The constitutional provisions involved herein were first specifically called to the attention of the Supreme Court of Arkansas on April 14, 1960, when the petitioner filed his Petition For Rehearing in that court. The Petition for Rehearing is included herein in the Appendix at page 21 to page 22.

ARGUMENT

The complaint filed in this cause alleges "That by the publishing of the said above quoted article the defendants maliciously and falsely sought to impeach the honesty, integrity, veracity, virtue and reputation of the plaintiff, and to expose this plaintiff to public hatred, contempt and ridicule thereby damaging plaintiff in his reputation, causing him great loss of business and causing him great mental anguish". (R. 4-5). At R. 7 the complaint alleged that respondents maliciously published the article in order to damage petitioner's standing in the community by reason of the racial tension existing in Bradley County.

No citations are required for the rule of law that a demurrer to a pleading admits the truth of the allegations contained in the pleading.

It has been universally held that questions of fact may not be disposed of by means of demurrer. Whether or not this vicious, false article damaged petitioner's reputation in the community in which he lives is a question of fact to be decided only by a jury of his peers.

Sections 4 and 5 of the *Canons of Professional Ethics of the American Bar Association* set forth the heavy responsibilities of a court appointed defense attorney. It is submitted that petitioner as an officer of the court had a duty to represent this Negro to the best of his ability. It is submitted that the law does not require a court appointed attorney to be maligned by a false newspaper article and then after having been maligned to have no recourse in any court because of the damages sustained to his reputation.

Amendments Five, Seven and Fourteen of the Constitution of the United States and Article 2, Section 8, of the

Constitution of Arkansas guarantee any citizen redress for any injuries done to his person or property. But in spite of these guarantees petitioner has been denied the right of being heard before any adjudicating tribunal. This constitutes a denial of due process by action of the state government. Unless this court issues its writ of certiorari herein petitioner will be without remedy, because the Bradley County Circuit Court and the Supreme Court of the State of Arkansas have denied this petitioner his right of due process of law and he will forever be without remedy.

CONCLUSION

For the foregoing reasons this petition for writ of certiorari should be granted.

Respectfully submitted,

ELZA CLIFTON BOND, JR.,

Attorney for Petitioner

APPENDIX

OPINION OF THE SUPREME COURT OR ARKANSAS

PAUL K. ROBERTS v. W. L. LOVE, ET AL

No. 2072
Opinion Delivered March 28, 1960

Appeal from the Bradley County Circuit Court; *G. B. Colvin, Jr.*, Judge; affirmed.

CARLETON HARRIS, Chief Justice

On March 3, 1959, appellant, a practicing attorney of Warren, Arkansas, was notified by a deputy sheriff of Bradley County that Circuit Judge G. B. Colvin, Jr., had requested Roberts to appear at the court house. Upon arriving at the court house, appellant found that the Circuit Court was in session, and that A. C. Duncan, a Negro, was charged by Information with the crime of assault with intent to rape, the charge relating to the alleged attempt to rape a white high school girl. Judge Colvin appointed appellant to defend the Negro. After talking to the defendant in a private consultation room, appellant returned to the court room, and observed that a representative of the local newspaper, "The Eagle Democrat", had obtained permission from the court to take pictures. Appellant objected to the taking of pictures, and the court withdrew its permission. Upon being asked to enter a plea, Roberts moved that the court commit the defendant to the State Hospital for thirty days observation.[1]

[1] Under the provisions of Initiated Act No. 3, adopted at the general election of 1936.

Following remarks, hereinafter set out, by the prosecuting attorney and judge, the motion was granted.

On March 5th, in its regular weekly edition, the following story (one column width) relative to the proceedings in the courtroom, appeared in the Eagle Democrat:

"ATTACKER SENT TO HOSPITAL FOR OBSERVATION

Through a legal technicality, Judge G. B. Colvin, Jr., Tuesday, was forced to send A. C. Duncan, admitted culprit in an attempted rape case here, to the State Hospital for 30 days of observation.

Duncan's hearing before Judge Colvin was held Tuesday evening, and Paul K. Roberts, Warren attorney, was appointed as the Negro's lawyer.

When Duncan was asked to make a plea of guilty or not guilty, Attorney Roberts arose and made a motion that he be sent to the State Hospital for observation. Roberts said he thought the Negro might be insane.

Prosecuting Attorney A. James Linder of Hamburg asked Roberts if he really thought that or if he was 'grasping for straws'. Roberts assured the Court that he felt the Negro might be insane.

Judge Colvin deliberated about the matter for several minutes before granting Roberts' motion, but he told those present that under the law, he was forced to do it.

At the start of the hearing, a representative of this newspaper received the permission of Judge Colvin to take candid camera pictures while the hearing was going on. After court started, however, Attorney Roberts raised an objection to the photographer's being allowed to take pictures. No more were taken.

> Duncan admitted to Chief of Police Tommy Dunaway and to the Editor of The Eagle Democrat Wednesday that he raised the window of an East Central Street home here, went in the window, and attempted to attack a high school senior girl. He said he wasn't being forced or coerced into making the statement, but that he was making it of his own free will."

On September 12th, appellant instituted suit against appellees for libel, alleging that the story was libelous, being partly false, and the true portions "slanted" to convey the impression that he was insincere in his defense, and had endeavored to defeat justice by trickery; that the publication was maliciously made in an effort to damage appellant's professional standing, and that he had been damaged in his reputation, and had suffered great loss of business by reason of said publication. Compensatory damages were sought in the amount of $250,000, and a like amount was asked for punitive damages.

Appellees demurred to the complaint, and subsequently moved that certain paragraphs of the complaint be stricken for the reason that said paragraphs were irrelevant, redundant, argumentative, and prejudicial. This motion was granted, the demurrer sustained, and the suit dismissed. From such comes this appeal.

Appellant first asserts that the Circuit Judge should have disqualified himself. Ark. Stats. Anno., §28-604 (1947), provides:

> "The judge or juror may be called as a witness by either party, but, in such cases, it is in the discretion of the court to suspend the trial and order it to take place before another judge or jury; and where a party knows, at the time the jury are impaneled that a juror is to be called by him as a witness, he shall then disclose it, and the juror shall be excluded from the jury."

We have held that a judge cannot testify for the state in a criminal case pending before him, *Rogers v. State*, 60 Ark. 76, 29 S. W. 894, but whether a chancellor is disqualified to hear a case in which he is called to testify, is a matter within his discretion. *Fidelity & Deposit Co. v. Cunningham*, 181 Ark. 954, 28 S. W. 2d 715. Dean Ralph C. Barnhart of the University of Arkansas Law School, in an article, "Theory of Testimonial Competency and Privilege", 4 Ark. Law Review, 377 (1950), discusses the matter of determining whether a judge should disqualify himself in situations where he will be called to testify. At page 389 of the article, it is stated:

> "The arguments that counsel will hesitate to make objections to the judge's testimony, or that if counsel does object, it may lead to unseemly conflicts between the judge and the counsel, that testimony by the judge tends to give undue advantage to the party in whose favor he testifies, plus the procedural difficulties of the judge's making the necessary rulings while he is on the stand, are not without weight. These considerations naturally are taken into account by the judge in the exercise of his discretion in continuing to sit or suspending trial and ordering it to take place before another judge after he has testified, and it is to be assumed that a proper exercise of discretion will avoid any real cause for objection."

In the case before us, such a situation does not actually arise, for here the judge was not called to testify, nor was any jury impaneled; rather, the litigation was disposed of by demurrer, and we find no abuse of discretion in the trial judge passing upon the pleadings.

While we think it immaterial in this litigation, we agree with appellant that the court erred in striking paragraphs 4 A, B, C, D, and E. The article, obviously, cannot

be classed as libelous *per se*. Any alleged libel, therefore, required innuendo denoting the libelous sense in which the words were intended. As stated in 53 C. J. S., *Libel and Slander*, §162b (a), at page 249:

> "Where the publication is defamatory on its face, or the meaning of the publication is plain and unambiguous, no innuendo, or explanation of the words published or spoken, is required. If, however, the words are not per se actionable, there must be an innuendo showing, by reference to facts stated in the inducement, the injurious sense imported by the charge. So, where the words used are susceptible of two meanings, one defamatory and the other harmless, plaintiff must by innuendo ascribe to them their defamatory meaning. * * * * * An innuendo, when necessarily pleaded, forms an essential portion of the statement of a cause of action for defamation which must be considered in determining the legal sufficiency of the complaint."

We therefore, in reaching our determination of whether the article was libelous, consider each averment in appellant's complaint.

Appellant only alleges one statement in the article to be actually false; *i. e.*, the opening phrase, "Through a legal technicality***." Appellant alleges as follows:

> "A. 'Through a legal technicality Judge G. B. Colvin, Jr., Tuesday was forced to send A. C. Duncan, admitted culprit in an attempted rape case here, to the State Hospital for 30 days for observation.' That the above paragraph was false in that a 30 day observation period for any person accused of crime is a substantive right rather than a legal technicality; that the above paragraph was false and was known to be false when written and said paragraph was designed to leave the impression with all who read said arti-

> cle and did leave the impression with all who read said article that the action on the part of the attorney in moving the court for a 30 day observation period was an unwarranted and improper act of the attorney and that it was not properly a part of the attorney's duty toward his client; that the above quoted paragraph was designed to leave the impression and did leave the impression with all who read same that Judge G. B. Colvin, Jr., was forced to commit the said A. C. Duncan for 30 days observation through chicanery practiced by the attorney and that the court was being forced to do something unusual and out of the ordinary; that the above quoted paragraph was designed to leave the impression that the court was forced to commit the accused to 30 days observation by a technical, legal loophole in which there was no merit whatever, which again was false."

Appellant states that because of the use of the term "legal technicality", which he alleges to be false, the complexion of the entire content of the article was changed. Appellant contends that the motion to send Duncan to the State Hospital for observation was a substantive right rather than a legal technicality. Webster's New International Dictionary, 2nd edition, defines the word "legal" as "of or pertaining to law; arising out of, or by virtue of, or included in law; based upon or governed by". Technicality is defined as "a particular which is technical, or peculiar to any trade, profession, sect, or the like, especially in terminology or method of procedure; as, medical and legal technicalities'." It would therefore appear that a dictionary definition of "legal technicality" is simply "legal procedure." Appellant asserts, however, that the actual meaning of the term is not controlling, to which we agree, and that the applicable rule is found in *Jackson v. Williams*, 92 Ark. 486, 123 S. W. 751, wherein we said:

> "*** the rule now is that the words are to be taken in their pain and natural meaning, and to be understood by courts and juries as other people would understand them, and according to the sense in which they appear to have been used and the ideas they are adopted to convey to those who heard or read them."

Under this rule, appellant argues that the term legal technicality denotes to the public mind "chicanery"; implies that one prevails, not because of right, but rather through trickery; in other words, in the matter before us, that justice was thwarted by unfair methods.

We do not agree with appellant that these words have that meaning to the general public. We are of the opinion that the term "legal technicality" connotes, to those unfamiliar with legal terms, the impression that the matter, or question passed on, was decided on grounds *other than the merits of the case.* By no stretch of the imagination can we visualize the words being understood to mean "to prevail by trickery or chicanery." Such a construction would, in our view, be unreasonable, and far removed from the plain and natural meaning of the term. Actually, it would appear that the motion made could properly be considered a legal technicality, inasmuch as the motion arose out of law, was governed by law, was peculiar to the legal profession, and is provided for under our procedure. In *Words and Phrases*, Vol. 40, page 524, as relating to criminal law, substantive law is defined as "that which declares what acts are crimes and prescribes punishment therefor. Procedural law is that which provides or regulates the steps by which one who violates a criminal statute is punished. Substantive law is that part of the law which creates, defines, and regulates rights, as opposed to adjective or remedial law, which prescribes the method of en-

forcing rights or obtaining redress for their invasion." Here, the two terms rather merge, for the right to an examination is included in substantive law, and the motion to obtain that right is a matter of procedure. Be that as it may, we find no merit in the contention, for even though the term be literally incorrect, we cannot agree that it carried with it the implications set out in appellant's complaint.

It is not contended that paragraphs B, C, D, and E are false (in fact, appellant admitted in oral argument that all of the rest of the events reported in the article are correctly stated); it is only contended that the story was slanted and maliciously designed to defame appellant's reputation. Appellant's allegations from paragraph B through E, in full, are as follows:

> "B. 'Duncan's hearing before Judge Colvin was held Tuesday evening, and Paul K. Roberts, Warren attorney, was appointed as the Negro's lawyer.' The above quoted paragraph was maliciously designed to associate and did associate the name of the attorney and the 'Negro's Lawyer' together in an attempt to invoke public hatred, contempt and in an attempt to damage plaintiff's reputation and was an attempt to infer that the Attorney's character was similar to the alleged characted of the Negro; that the above quoted paragraph was designed to conceal and did conceal the fact that the court appointed the attorney to the duty he entered upon and into and that the attorney could not refuse the appointment.
>
> C. 'Prosecuting Attorney A. James Linder of Hamburg asked Roberts if he really thought (that the defendant might be insane) that or if he was "grasping at straws". Roberts assured the Court that he felt the Negro might be insane.' The above quoted paragraph was designed to leave the impression and did

leave the impression with all who read said article that the attorney was insincere in making the said motion; that said motion on the part of the plaintiff was just. a 'legal technicality' and could have no possible merit thereto.

D. 'Judge Colvin deliberated about the motion for several minutes before granting Roberts' motion, but he told those present that under the law he was forced to do it.' The above quoted paragraph was designed to leave the impression upon all who read said article and did leave the impression upon all who read same that the alleged 'legal technicality' spoken of heretofore was so obnoxious to the court that the court reluctantly granted the said motion; that the above quoted paragraph proves that the above paragraph was written with evil design for the reason that the paragraph states but under the law he (the court) told all present that under the law, he was forced to do it'; that the above quoted paragraph was designed to leave the impression and did leave the impression with all who read same that the attorney had through trickery, chicanery, and the use of a legal loophole been able to defeat justice: that the above quoted paragraph was designed to mislead all who read same into the belief that the motion was improper when in fact said 30 day examination is generally accepted as a prerequisite to the final hearing of a case of the same nature as the one with which A. C. Duncan was charged.

E. 'At the start of the hearing, a representative of this newspaper received the permission of Judge Colvin to take candid camera pictures while the hearing was going on. After court started, however. Attorney Roberts raised an objection to the photographer's being allowed to take pictures. No more were taken.' The above quoted paragraph was designed to leave the impression and did lease the impression with all those who read said article that through the 'legal

technicality' of the attorney the photographer was deprived of a right to take pictures; the above quoted paragraph was designed to conceal the fact that photographers are barred from courtrooms by law and said paragraph was a deliberate attempt on the defendants' part to damage and defame plaintiff's reputation."

If the allegations in paragraph B constitute a cause of action, then libel is committed any time a newspaper reports that a white attorney represents a Negro in a criminal action. The assertion that the phrase stating that Roberts was appointed as the Negro's lawyer "was an attempt to infer that the attorney's character was similar to the alleged character of the Negro" transcends any reasonable interpretation that could be given the words, and the article plainly stated that Roberts was appointed.

In quoting the remark of the prosecuting attorney in open court, the newspaper demonstrated its good faith by stating "Roberts assured the Court that he felt the Negro might be insane." Paragraphs D and E relate to a factual report of the proceedings, and we are unable to ascribe to this report the meaning, impression, or interpretation given it by appellant. Incidentally, photographers are not barred from courtrooms by law in this state; the prohibition arises under the Judicial Code of Ethics promulgated by the American Bar Association.[2]

[2] The Code of Judicial Ethics was adopted by the State Judicial Council of Arkansas in September, 1958, and Section 35, pertinent hereto, reads as follows: "Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the court room, during sessions of the court or recesses between sessions, and the broadcasting or televising of court proceedings are calculated to detract from the essential dignity of the proceed-

There are several defenses to a suit for libel, among them the conditional privilege according to newspaper reports of judicial proceedings. However, since we are of the view that the publication herein involved is not susceptible of a defamatory meaning, it is irrelevant whether the conditional privilege attaches, and we see no reason to discuss this defense. Likewise, though the factual report appearing in the article was admittedly true (except that appellant alleged the term "legal technicality" to be false), our conclusions are not based upon that premise, for we do not say unequivocally or dogmatically that one can never be libeled by a statement, even though true. Rather, we determine this litigation on the basis of the fact that when this article is construed as a whole, considering the words in their plain and natural meaning, according to the sense in which they appear to have been used, and the ideas such words would convey to those who read them — the article is not libelous. In other words, the article is not susceptible of a defamatory meaning.

We think the public is generally cognizant of the fact that attorneys are appointed to represent indigent prisoners. The story plainly states in the second paragraph that appellant was appointed as the Negro's lawyer. There is nothing in the article which even remotely indicates that Roberts sought this appointment or desired to represent the defendant. In view of public sentiment and the probable outraged feeling of the community toward a crime of this nature, we can readily understand appellant's sensitivity to the article, we daresay that numerous instances have arisen wherein people have been embarrassed by see-

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ings, distract the witness in giving his testimony, degrade the court, and create misconceptions with respect thereto in the mind of the public and should not be permitted. ***"

ing their name in print, though no wrongful act had been committed, but under our system of government and its democratic processes, a free press is assured. Certainly, this is as it should be. As stated in Article II, Section 6, of the Constitution of the State of Arkansas:

> "The liberty of the press shall forever remain inviolate. The free communication of thought and opinions is one of the invaluable rights of man; and all persons may freely write and publish their sentiments on all subjects, being responsible for the abuse of such right."

The article in question is not an abuse of this right.

We deem it proper, in view of appellant's sincere feelings, to point out that in representing this defendant, he was only carrying out a duty imposed upon him by virtue of his profession, and as a member of the Bar of Arkansas. Canon IV of the Canons of Professional Ethics provides:

> "A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, *and should always exert his best efforts in his behalf.*"[3]

We comment this attorney, as indeed any attorney should merit commendation, for his compliance with this Canon, which assures diligent representation to any prisoner, irrespective of the crime charged. The right of representation is fundamental to the American concept of justice. Here, Mr. Roberts, though apparently finding his duty distasteful, did not equivocate, nor seek to escape, from the responsibility assigned to him.

No cause of action having been stated by the complaint, the Judgment is affirmed.

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[3] Emphasis supplied.

Justice Johnson dissents.

JIM JOHNSON, Associate Justice, dissenting:

This case comes up after a demurred to the complaint was sustained. It is the rule in Arkansas that allegations of a complaint are accepted as true on demurrer. *Glenn v. Union Bank & Trust Company*, 150 Ark. 38, 233 S. W. 798. This being so, I am convinced the appellant raised a prima facie case and the evidence should have gone to the jury. After all, there is only one basic question here and that is the effect of the article on the plaintiff's reputation in the community. There are two ways to find this effect. One is from the evidence the plaintiff would have produced. The other is by giving certain meaning to words used in context as the majority has here. This second method is inexact, to say the least.

I do not agree with the majority statement that this article could obviously not be libelous per se. If the article is false and tends to injure the paintiff's reputation and thereby expose him to public hatred, contempt, or shame, it is libelous per se. *Hall v. Binghampton Press Co.* 29 N. Y. S. 760.

The question of falsity in this case revolves around the use of the term "legal technicality". In arriving at a conclusion as to whether the defendants use of the term was true or false under the circumstances I don't believe we should substitute a dictionary definition of the term for a jury finding. The plaintiff should have the benefit of any meaning ascribed to the phrase by his neighbors, and possible clients, in his community. *Jackson v. Williams*, 92 Ark. 486, 123 S. W. 751. The cause should be tried on its merits, not by this court as an Appellate jury.

For the reasons stated above, I respectfully dissent.

IN THE SUPREME COURT OF ARKANSAS

PAUL K. ROBERTS, ... Appellant

vs. No. 2072

W. L. LOVE, ET AL, ... Appellees

PETITION FOR RE-HEARING

Comes the appellant and respectfully petitions the court to recall the opinion filed in this case and to set aside the decision rendered on March 28, 1960, and to grant a re-hearing in this cause. Such re-hearing should be granted for the following reasons:

1.

This cause is before this court on demurrer. The cause of action stated is for libel. The complaint filed herein alleged "That by the publishing of the said above quoted article the said defendants maliciously and falsely sought to impeach the honesty, integrity, veracity, virtue and reputation of the plaintiff, and to expose this plaintiff to public hatred, contempt and ridicule thereby damaging plaintiff in his reputation, causing him great loss of business and causing him great mental anguish". The defendant-appellees, by filing their demurrer to said complaint, admitted allegations of said complaint. The action of the Arkansas Supreme Court in sustaining the demurrer denied appellant of his rights secured to him under the provision of Amendments No. 5, 7 and 14 of the Constitution of the United States.

2.

The complaint in the instant case alleged "That on the 5th day of March, 1959, the said above named defendants wilfully, maliciously, and falsely published with the intent to libel and defame this plaintiff the following item in said *Eagle Democrat*". The action of the Arkansas Supreme Court in sustaining a demurrer to said complaint denied the appellant his rights secured to him under the provisions of Article 2, Section 8, of the Constitution of the State of Arkansas.

3.

There are allegations made in the complaint which raise questions of fact which can only be resolved by a jury.

4.

It is a question for the jury whether or not Paragraphs 4 A, B, C, D and E of the complaint are true or not true, and if substantially true, whether or not they are so slanted and distorted as to give the impression to the reading public that the appellant had been guilty of unethical conduct.

5.

It is submitted that the court should consider the danger of setting a precedent whereby allegations of fact contained in a complaint will be henceforth resolved by means of a demurrer.

RESPECTFULLY SUBMITTED,

PAUL K. ROBERTS, APPELLANT

By_____

His Attorney

IN THE SUPREME COURT OF ARKANSAS
NOVEMBER TERM, 1959

Proceedings of May 2, 1960

PAUL K. ROBERTS, ... Appellant

vs. No. 5-2072

W. L. LOVE, ET AL,. ..... Appellees

ORDER

Rehearing denied

May 2, 1960

• • • • •

(R. 41)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 253

PAUL K. ROBERTS

W. L. LOVE, JAMES MOSELEY, O. K. LITTLEFIELD, JAMES WHITE, MARION WHITE, D. B. A[illegible], ROBERT E. NEWTON

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

Attacker Sent To Hospital For Observation

Through a legal technicality, Judge G. B. Colvin, Jr., Tuesday was forced to send A. C. Duncan, admitted culprit in an attempted rape case here, to the State Hospital for 30 days of observation.

Duncan's hearing before Judge Colvin was held Tuesday evening, and Paul K. Roberts, Warren attorney, was appointed as the Negro's lawyer.

When Duncan was asked to make a plea of guilty or not guilty, Attorney Roberts arose and made a motion that he be sent to the State Hospital for observation. Roberts said he thought the Negro might be insane.

Prosecuting Attorney A. James Linder of Hamburg asked Roberts if he really thought that or if he was "grasping for straws." Roberts assured the Court that he felt the Negro might be insane.

Judge Colvin deliberated about the matter for several minutes before granting Roberts' motion, but he told those present that under law, he was forced to do it.

At the start of the hearing, a representative of this newspaper received the permission of Judge Colvin to take candid camera pictures while the hearing was going on. After court started, however, Attorney Roberts raised an objection to the photographer's being allowed to take pictures. No more were taken.

Duncan admitted to Chief of Police Tommy Dunaway and to the Editor of The Eagle Democrat Wednesday that he raised the window of an East Central Street home here, went in the window, and attempted to attack a high school senior girl. He said he wasn't being forced or coerced into making the statement, but that he was making it of his own free will.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 253

PAUL K. ROBERTS,

Petitioner,

vs.

W. L. LOVE, JAMES MOSELEY, O. K. LITTLEFIELD, JAMES WHITE AND MARION WHITE, A PARTNERSHIP, D/B/A THE EAGLE PUBLISHING COMPANY, AND ROBERT L. NEWTON,

Respondents

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

Petitioner herein seeks a Writ of Certiorari to the Supreme Court of Arkansas to obtain review of a judgment of that Court affirming a judgment of dismissal of the above entitled action entered by the Circuit Court of Bradley County, Arkansas, upon Respondents' Demurrer to Petitioner's Complaint and Amendment thereto. Both of said Courts held that Petitioner's Complaint and Amendment thereto failed to state a cause of action for libel.

Petitioner's Petition must be denied because no federal

question is presented herein, and even if any federal question is presented the same was not timely and properly raised in the Court below.

Because it is thought it will be helpful to this Court, before discussing the jurisdiction of this Court and Petitioner's contentions herein, an error in Petitioner's Petition is first noted and a brief statement is made of the pertinent facts out of which this litigation arose.

Error in Petitioner's Statement of Question Presented

In Petitioner's statement of question presented to this Court, it is said:

> "The Trial Court and the Supreme Court of Arkansas sustained the Motion to Strike and the Demurrer and dismissed the Complaint."

This statement is partly in error. While the Trial Court and the Supreme Court of Arkansas both sustained Respondent's Demurrer to Petitioner's Complaint and Amendment thereto, the Supreme Court did not sustain Respondent's Motion to Strike as the Trial Court had done. On this point the Supreme Court of Arkansas said:

> "While we think it immaterial in this litigation, we agree with Appellant that the Court erred in striking paragraphs 4a, b, c, d and e. The article, obviously, cannot be classed as libelous *per se*. Any alleged libel, therefore, required innuendo denoting the libelous sense in which the words were intended. . . . We therefore, in reaching our determination of whether the article was libelous, consider each averment in Appellant's Complaint" (Petitioner's Petition for Writ, pp. 11, 12.)

Factual Statement

On September 12, 1959, Petitioner commenced his action for alleged libel against Respondents in the Circuit Court of Bradley County, Arkansas. The news article of which Petitioner complained was written by an Employee, Robert L. Newton, and published in the weekly edition of The Eagle Democrat, a county newspaper owned by the Respondents, Love et al. The complaint set out the news article in full and in paragraphs 4a, b, c, d & e there were alleged Petitioner's interpretations of the objective report of a newsworthy incident in a local courtroom. Petitioner's conclusions in his Complaint were that the story was slanted and maliciously designed to defame Appellant's reputation. The article started with these words:

> "Through a legal technicality, Judge G. B. Colvin, Jr., Tuesday, was forced to send A. C. Duncan, admitted culprit in an attempted rape case here, to the State Hospital for 30 days of observation. Duncan's hearing before Judge Colvin was held Tuesday evening, and Paul K. Roberts, Warren Attorney was appointed as the Negro's lawyer. When Duncan was asked to make a plea of guilty or not guilty, Attorney Roberts arose and made a motion that he be sent to the State Hospital for observation. Roberts said he thought the Negro might be insane." (See Petitioner's Petition for Writ, p. 9, and, the entire article printed on the front page of The Eagle Democrat—a photo print of which is pasted within the fly cover of this Brief).

In the Trial Court and Supreme Court of Arkansas, Petitioner contended that because of the use of the term "legal technicality", which he alleged to be false, the complexion of the entire content of the article was changed. He further contended that the term "legal technicality" denotes to the public mind "chicanery"; implies that one prevails, not because of right, but rather through trickery;

in other words, that justice was thwarted by unfair methods. Petitioner does not contend that any paragraph of the news article is false except the first paragraph in its use of the words "legal technicality."

In the Trial Court, Respondents filed a Demurrer to Petitioner's Complaint and Amendment thereto on the ground that no cause of action for libel was stated therein. Also, Respondents filed a Motion to Strike the paragraphs of the Complaint stating Petitioner's interpretations of the news article were erroneous. The Trial Judge, who was presiding over the Court when the incident reported in the news article occurred, also, conducted the hearing on Respondent's Demurrer and Motion to Strike Petitioner's Complaint for the alleged libel. After full hearing, the Trial Court sustained the Demurrer and Motion to Strike and dismissed the suit on the ground that no cause of action for libel was stated. On appeal to the Supreme Court of Arkansas by Petitioner, after briefs were filed and oral arguments were heard, the Appellate Court affirmed the judgment of the Bradley Circuit Court in sustaining the Demurrer and in dismissing Petitioner's suit. Also, the Supreme Court of Arkansas denied Petitioner's Petition for a Rehearing.

Petitioner's Petition for Writ of Certiorari to the Supreme Court of Arkansas to obtain review of the judgment of that Court affirming the judgment of dismissal of the above claim in the Circuit Court of Bradley County, Arkansas, must be denied for the following reasons:

(1) The States are left to regulate trials in their own Courts and a trial by jury in suits at common law pending in a State Court is not a privilege or immunity of American citizenship; (2) no federal question is presented in Petition of Petitioner; and, (3) if any federal question is

presented, it was not timely and properly raised in the Court below.

A Trial by Jury in a State is Not a Privilege or Immunity of National Citizenship

Petitioner contends that as guaranteed to him by Amendment Five to U. S. Constitution (an American citizen cannot be deprived of life, liberty or property without due process of law), Amendment Seven (right of trial by jury in suits at common law in any Court of the United States), and, Amendment Fourteen (no State shall deprive a person of life, liberty or property without due process of law nor deny to any person the equal protection of the laws), he has been denied due process by State action in the failure to allow to him a jury trial in a State Court on his claim of being libelled.

Petitioner further says he was denied of a constitutional right as an American citizen to have his allegations of libel tried by a jury because of Article 2, Section 8, Constitution of Arkansas (securing protection to one against criminal charges).

On April 24, 1876, this Court decided in *Joseph A. Walker* v. *Charles S. Sauvinet*, 92 U.S. 90; 23 L. Ed. 678, wherein judgment was rendered in a State Court against Walker by the Judge in a suit for damages after a jury had failed to agree and under a Statute vesting that power of adjudication in the Judge, that "A State cannot deprive a person of his property without due process of law; but this does not necessarily imply that all trials in the State Courts affecting the property of persons must be by jury. This requirement of the Constitution is met, if the trial is had according to the settled course of judicial proceedings. . . . Due process of law is process due according to the law of the land. This process in the States is regulated by the law of the State. Our power over that law is only to

determine whether it is in conflict with the Supreme law of the land. That is to say, with the Constitution and laws of the United States made in pursuance thereof, or with any treaty made under the authority of the United States. Art. VI Const. Here the State Court has decided that the proceeding below was in accordance with the law of the State; and we do not find that to be contrary to the Constitution or any law or treaty of the United States."

Walker v. Sauvinet has been cited in 25 Federal cases and in 19 State Court decisions according to Shepard Citator. It has not been overruled. It was distinguished in *American Publishing Company* v. *Fisher*, 166 U.S. 464, 41 L. Ed 1079 dealing with a territorial act in Utah. The case is cited in *Bute* v. *Illinois*, 333 U. S. 639 at page 659, 92 L. Ed. 986 at page 996, and *Stein* v. *New York*, 346 U. S. 156 at page 179, 97 L. Ed. 1522 at page 1539. In the Stein case, this Court said:

> "The States are free to allocate functions between judge and jury as they see fit."

Certainly, a function and power of a Trial Judge under the Statutes in Arkansas when a Demurrer to a Complaint raises the question that no cause of action is stated is to decide that issue of law after treating the facts as well pleaded to be true. See, Arkansas Statutes 27-1115.

The Petition Presents No Federal Question

Review by the Supreme Court of a judgment of a State Court requires that it appear from the record affirmatively or by fair implication, that a decision as to the federal question was necessary to the State's determination of the cause. *Williams v. Kaiser* (1945) 323 U. S. 471, 89 L. Ed. 398, 65 S. Ct. 363.

In Petitioner's Complaint and Amendment thereto alleging the news report of that which occurred in a court-

room defamed his reputation and Respondents' Demurrer and Motion to Strike, there was nothing to indicate or intimate there was involved any federal question. Petitioner's contentions boil down to the claim that the decision of the Supreme Court of Arkansas is erroneous. But, no constitutional provision is violated by an erroneous decision of a State Court. *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U. S. 673, 74 L. Ed. 1107. Moreover, the Supreme Court of Arkansas did not commit any error in its conclusion that Petitioner's Complaint alleging libel did not state a cause of action.

Petitioner's contention that the Supreme Court of Arkansas denied him his right to property without due process of law in deciding he did not state a cause of action at law entitling him to a trial by jury in a State Court does not present a federal question. The Court had before it a question of law under the State's controlling Statutes and its own prior decisions.

In order to justify this Court in taking jurisdiction to review the decision of the Supreme Court of Arkansas, it must appear that a federal question arose in the State Court, that the question was decided by the State Court or by necessary intendment it appears it must have been raised and a decision made. It is not sufficient to show that a question might have arisen or is applicable unless it is further shown that it did arise and was applied by the State Court. *Crowell v. Randell* 10 Pet. (U.S.) 368, 9 L. Ed. 458. It is essential to show that a federal question actually arose. See, Annotation, Review of State Decisions, following *Minnesota v. National Tea Company*, 308 U. S. 550, in 84 L. Ed. 920 at Page 927. See also, *Black v. Cutter Laboratories*, 351 U. S. 292, 100 L. Ed. 1188.

If Federal Question Is Presented It Was Not Timely Nor Properly Made.

The Petition for Certiorari herein correctly reflects no federal question by a pleading or otherwise was raised, indicated or suggested in the case at bar until after the Supreme Court of Arkansas had decided the case and rendered its opinion therein on March 28, 1960. Thereafter, within 17 days, as the Rules of the Supreme Court of Arkansas allow (Rule 29, Rules of Supreme Court of Arkansas) Petitioner filed his Petition for Rehearing. For the first time in the case Petitioner injected his constitutional plea in this language:

> "The action of the Arkansas Supreme Court in sustaining the demurrer denied Appellant of his rights secured to him under the provision of Amendments No. 5, 7 and 14 of the Constitution of the United States." (Petitioner's Petition for Writ, p. 21).

As this Court said as recently as June 22, 1959 in *Raley v. Ohio*, 360 U. S. 423 at page 435, 3 L. Ed. (2) 1344 at page 1353:

> "But this does not suffice: It is essential to our jurisdiction on appeal . . . that there be an explicit and timely insistence in the State Courts that a State Statute as applied, is repugnant to the Federal Constitution, treaties or laws."

In *McGarritty, Adm. v. Delaware River Bridge Commission*, 292 U. S. 19 at p. 20, 78 L. Ed. 1097 at p. 1096, this Court said:

> "No Federal question was raised prior to a petition for rehearing in the Supreme Court of the State, which was denied without move. Appellant insists that questions under the Fourteenth Amendment were thus raised at the first opportunity. The petition for rehearing does not appear in the record. Nor does the

> record contain the pleadings, the evidence, or any findings by the State Court upon the question of fact involved. . . . The appeal is dismissed for the want of a properly presented substantial Federal question."

In *American Surety Co. v. Baldwin*, 287 U. S. 155 at p. 164, 77 L. Ed. 231 at p. 236, this Court in discussing the seasonable and proper manner of raising a federal question, stated:

> "The Surety Company petitioned for a rehearing. In that petition, besides reiterating several of its previous contentions, it urged for the first time, that the rendition of the judgment on its undertaking violated the due process clause of the Fourteenth Amendment. The petition was denied without opinion. The federal claim there made cannot serve as the basis for review by this Court."

The inclusion in Petitioner's Petition for Rehearing filed in the Supreme Court of Arkansas of one sentence, "the Court in sustaining the Demurrer denied him of his rights under Amendments number 5, 7 and 14 of the Constitution of the United States," does not constitute a clear and timely presentation of a substantial Federal question which would lead this Court to review a decision of the Supreme Court of the State even though a Federal question was presented. In the case at Bar, no Federal question is presented.

The Petition for Writ of Certiorari should be denied.

Respectfully Submitted,

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SUPREME COURT, U.S.
FILED
OCT 3 1960
JAMES F. BROWNING, Clerk

IN THE

Supreme Court of the United States

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REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

THE FEDERAL QUESTION WAS TIMELY AND PROPERLY MADE

The Petitioner in the case at bar within 17 days after March 28, 1960, filed in the Supreme Court of Arkansas his Petition For Rehearing as allowed by Rule 20, Rules of the Supreme Court of Arkansas. In this Petition For Rehearing the Petitioner alleged "The action of the Supreme Court of Arkansas sustaining the demurrer denied appel-

lant his rights secured to him under the provisions of Amendents No. 5, 7 and 14 of the Constitution of the United States." On May 2, 1960, the Supreme Court of Arkansas denied the Petition For Rehearing. This constituted a timely and proper presentation of the constitutional question to the Supreme Court of Arkansas and this consfitutional question is now properly before this court.

The case of *Saunders v. Shaw and the Board of Drainage Commissioners of the Bayou Terre-Aux-Boefs Drainage District*, et al., 244 U. S. 317, is a case very similar to the case at bar. In this *Saunders* case the lower court had decided the case without hearing any evidence and the Petitioner had alleged constitutional questions of due process in his Petition For Rehearing.

This court granted the Petition For Certiorari and had the following to say about cases like the one at bar: "But when the act complained of is the act of the Supreme Court, done unexpectedly at the end of the proceeding, when plaintiff in error no longer had any right to add to the record, it would leave a serious gap in the remedy for infraction of constitutional rights if the party aggrieved in such a way could not come here. The defendant was not bound to contemplate a decision of the case before his evidence was heard and therefore was not bound to ask a ruling or take other precautions in advance. The denial of rights given by the Fourteenth Amendment need not be by legislation. *Home Telephone and Telegraph Company v. Los Angeles*, 271 U. S. 278. It appears that shortly after the Supreme Court had declined to entertain the petition for rehearing the plaintiff in error brought the claim of constitutional right to the attention of the Chief

Justice of the state by his assignment of errors. We do not see what more he could have done."

In the case at bar the Petitioner made certain allegations of fact in his complaint which could have been proven or refuted only by the taking of testimony. *It is submitted that the Petitioner's rights guaranteed to him by the constitution of the United States had not been denied when he filed his complaint in the Circuit Court of Bradley County, Arkansas.* Petitioner had every right to believe that the Circuit Court of Bradley County would follow the law. Likewise, he had every right to believe that the Supreme Court of Arkansas would safeguard his constitutional rights. When these two courts summarily dismissed his complaint by means of demurrer, then his constitutional rights were invaded, and that is when Petitioner called this fact to the attention of the Supreme Court of Arkansas.

The case of *Arrowsmith v. Harmoning, Administratrix and Others*, 118 U. S. 194, is a case in which the Petitioner set up the following assignment of error on Petition For Rehearing before the Supreme Court of the State of Ohio:

"3rd. That by affirming the judgment of the Court of Common Pleas by said District Court, this plaintiff in error was deprived of his right of trial by jury, contrary to the provisions of the Constitution of this State, and deprived of his property without due process of law, contrary to the provisions of the Constitution of the United States."

The court in deciding this case, went on to say "This is the first time, so far as the record discloses, that even the semblance of a Federal right was set up in this case,

and even here it is not easy to see on what ground it could be claimed that Arrowsmith had been deprived of his property in violation of the Constitution of the United States. It is for this reason, perhaps, that the Supreme Court (of Ohio) while affirming the judgment of the District Court, took no notice of this assignment of error in its opinion. The decision, however, necessarily involved a denial of the right which was claimed in this way, and thus we probably have technical jurisdiction. For this reason the motion to dismiss must be denied, but the question on which our jurisdiction depends was so manifestly decided right, that the case ought not to be held for further argument."

It can be seen from the above cited cases that if a State Supreme Court passes upon the federal question raised for the first time even on Petition For Rehearing, that this constitutes a timely presentation of the federal question.

To the same effect is the case of *Raley v. Ohio*, 360 U. S. 423. In granting the Petition For Certiorari in the *Raley* case, this court said, "There can be no question as to the proper presentation of a federal claim when the highest state court passes upon it. See *Manhatten Life Insurance Company v. Cohen*, 234 U. S. 123, 124. We think this sufficient to satisfy the statutory requirement sought to be vindicated in this court to be one claimed below. 28 USC Sec. 1257 (3)."

The case at bar is closely akin to the case of *Brown v. Western Railway of Alabama*, 338 U. S. 294. In the *Brown* case, as in the case at bar, the court had under consideration whether or not the lower court should have sustained a demurrer to a complaint. In the Brown case, the plaintiff filed a complaint in which he stated a cause of

action. A demurrer interposed by defendant was sustained by the trial court. The Supreme Court sustained the trial court.

In granting certiorari out of this court it was said, "A long series of cases previously decided, from which we see no reason to depart, makes it our duty to construe the allegations of this complaint in order to determine whether the petitioner has been denied a right of trial granted him by Congress. * * * We hold that the allegations of the complaint do set forth a cause of action which should not have been dismissed. * * * Certainly these allegations are sufficient to permit introduction of evidence from which a jury might infer that petitioner's injuries were due to the railroad's negligence in failing to supply a reasonably safe place to work.

Here the Georgia court has decided as a matter of law that no inference of railroad negligence could be drawn from the facts alleged in this case. Rather the court itself has drawn from the pleadings the reverse inference that the sole proximate cause of petitioner's injury was his own negligence."

Upon trial of this case the evidence offered may or may not support inferences of negligence . We simply hold that under the facts alleged it was error to dismiss the complaint and that petitioner should be allowed to try his case."

The Supreme Court of Arkansas has decided as a matter of law that this vicious, false, slanted, distorted article which was clearly written to cause racial tension and animosity toward the Petitioner was true and could not have damaged the reputation of this Petitioner. The Supreme Court of Arkansas has stated in its opinion "In view of

public sentiment and the probable outraged feeling of the community toward a crime of this nature, we can readily understand appellant's sensitivity toward the article, we dare say that numerous instances have arisen wherein people have been embarassed by seeing their name in print, though no harmful act had been committed, but under our system of government and its democratic prosesses, a free press is assured". The court is saying in this sentence that even though this Petitioner's reputation might have been damaged, when he had done no wrong, yet the importance of the free press is such that no liability should arise even though the press has libelled him.

All this Petitioner has ever asked of the Circuit Court of Bradley County or the Supreme Court of Arkansas is that he be allowed to present his case to a jury. The Bradley County Circuit Court and the Arkansas Supreme Court have gone to extreme lengths to see that he never has that opportunity. As long as a situation exists in this United States of America where a citizen of this country cannot present his case to the proper adjudicating tribunal just so long will that citizen be deprived of his constitutional rights as set forth in our constitution.

The Circuit Court of Bradley County and the Supreme Court of Arkansas have held ~~that~~ as a matter of law that when an accused person is committed to the hospital for mental observation that this action is a "legal technicality." This is patently incorrect because an insane person is not placed in a hospital for treatment because of a technicality but because it has always been a common law substantive right that those who were insane were not legally responsible for their actions.

The Supreme Court of Arkansas states that as a mat-

ter of law there could not possibly be anything libellous in an article stating that the circuit judge "was forced to send A. C. Duncan" to the State Hospital in spite of the fact that Section 43-1305 of Arkansas Statutes, 1947 Edition, specifically states that upon motion suggesting insanity "whereupon the court shall direct the examination (of accused) by two (2) reputable and disinterested physicians."

A. C. Duncan is a Negro, and at the time Petitioner was appointed to represent him feeling was running very high against him. The respondent newspaper was not content to publish a restrained, factual account of the hearing but rather chose the sensational, tabloid type account which is the basis of this suit. Whether or not this sensational, false, distorted newspaper article damaged the reputation of this Petitioner is a question of fact which can only be decided by a jury and until this petitioner is given an opportunity to submit his case to a jury of his peers just so long will his constitutional rights guaranteed to him under the provisions of Amendments No. 5, 7 and 14 have been violated.

Unless this court grants this Petition For Certiorai this Petitioner will be without redemdy.

Respectfully submitted,

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